

Amy P. Lally (SBN 198555)  
alally@sidley.com  
Ellyce R. Cooper (SBN 204453)  
ecooper@sidley.com  
SIDLEY AUSTIN LLP  
1999 Avenue of the Stars, 17th Floor  
Los Angeles, CA 90067  
Telephone: +1 310 595-9500  
Facsimile: +1 310 595-9501

Mark Rosenbaum (SBN 59940)  
mrosenbaum@publiccounsel.org  
Judy London (SBN 149431)  
jlondon@publiccounsel.org  
Talia Inlender (SBN 253796)  
tinlender@publiccounsel.org  
Alisa Hartz (SBN 285141)  
ahartz@publiccounsel.org  
Lucero Chavez (SBN 273531)  
lchavez@publiccounsel.org  
PUBLIC COUNSEL  
610 S. Ardmore Avenue  
Los Angeles, CA 90005  
Telephone: +1 213 385-2977  
Facsimile: +1 213 385-9089

*Attorneys for Plaintiffs*  
*Additional Counsel on next page*

JOSEPH H. HUNT  
Assistant Attorney General  
ERNESTO H. MOLINA, JR.  
Deputy Director  
DANIEL GOLDMAN  
Senior Litigation Counsel  
MICHELLE R. SLACK  
LANCE JOLLEY  
SCOTT M. MARCONDA, CBN 144225  
Trial Attorneys

MICHAEL HEYSE  
Trial Attorney  
U.S. Department of Justice  
Office of Immigration Litigation  
PO Box 878, Ben Franklin Station  
Washington, DC 20044  
Michael.Heyse@usdoj.gov  
Telephone: (202) 305-7002  
Fax: (202) 616-4923  
Attorneys for Defendants

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**WESTERN DIVISION**

MS. J.P., MS. J.O., AND MS. R.M., on  
behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

MATTHEW G. WHITAKER, ACTING  
ATTORNEY GENERAL, ET AL.,

Defendants.

Case No. 2:18-cv-06081-JAK-SK

**JOINT STATEMENT REGARDING  
SETTLEMENT DISCUSSIONS AND  
LODGING OF MS. L. SETTLEMENT  
AGREEMENT PURSUANT TO  
COURT'S JANUARY 7, 2019 ORDER**

Assigned to the Hon. John A. Kronstadt

1 Carter G. Phillips\*  
2 cphillips@sidley.com  
3 Jennifer J. Clark\*  
4 jennifer.clark@sidley.com  
5 SIDLEY AUSTIN LLP  
6 1501 K Street, N.W.  
7 Washington, D.C. 20005  
8 Telephone: +1 202 736-8000  
9 Facsimile: +1 202 736-8711

Mark E. Haddad (SBN 205945)  
markhadd@usc.edu  
Part-time Lecturer in Law  
USC Gould School of Law\*\*  
University of Southern California  
699 Exposition Blvd.  
Los Angeles, CA 90089  
Telephone: +1 213 675-5957

8 Michael Andolina\*  
9 mandolina@sidley.com  
10 Timothy Payne\*  
11 tpayne@sidley.com  
12 Kevin Fee\*  
13 kfee@sidley.com  
14 SIDLEY AUSTIN LLP  
15 One South Dearborn  
Chicago, IL 60603  
Telephone: +1 312 853-7000  
Facsimile: +1 312 853-7036

Luis Cortes Romero (SBN 310852)  
lcortes@ia-lc.com  
Alma L. David (SBN 257676)  
adavid@ia-lc.com  
IMMIGRANT ADVOCACY &  
LITIGATION CENTER, PLLC  
19309 68th Avenue South, Suite R-102  
Kent, WA 98032  
Telephone: +1 253 872-4730  
Facsimile: +1 253 237-1591

16 Sean A. Commons (SBN 217603)  
17 scommons@sidley.com  
18 Bridget S. Johnsen (SBN 210778)  
19 bjohnsen@sidley.com  
20 SIDLEY AUSTIN LLP  
21 555 West Fifth Street  
22 Los Angeles, CA 90013  
23 Telephone: +1 213 896-6000  
24 Facsimile: +1 213 896-6600

23 \*Admitted pro hac vice

24 \*\* Institution listed for identification purposes only

**JOINT STATEMENT REGARDING SETTLEMENT DISCUSSIONS AND  
LODGING THE MS. L. SETTLEMENT AGREEMENT**

**A. Plaintiffs' Statement**

It is productive for counsel to discuss settlement of this action both at this time and in future stages of this case, and Plaintiffs respectfully request appointment of a bench officer. In light of the ongoing lapse in appropriations, Plaintiffs are amenable to the mediation between counsel taking place in Washington, D.C. at a time convenient for the appointed officer, or by video conference. Plaintiffs are committed to participating in good-faith direct settlement discussions both before and, if necessary, after the scheduled mediation.

Plaintiffs hope that direct discussions between counsel will prove fruitful and are committed to negotiating in good faith with Defendants to determine whether a negotiated resolution is possible. However, for the reasons set forth in Plaintiffs' Motion for Preliminary Injunction (ECF No. 45), Plaintiffs and Class Members will suffer irreparable injury without the preliminary relief sought, and therefore do not believe that rulings on Plaintiffs' fully briefed and heard Motion for Preliminary Injunction (ECF No. 45) and Motion for Class Certification (ECF No. 81) should be deferred pending settlement discussions. Plaintiffs respectfully request that the Court rule on these motions as soon as it deems it advisable to do so.

Contrary to Defendants' claims, Plaintiffs' Motion for Preliminary Injunction and Motion for Class Certification are far from moot. Recently, the National Research Center on Hispanic Children and Families reported:

- "Abundant evidence shows that forceful separation from parents is harmful for children in the short term and over time."
- "Children separated from a primary caregiver without preparation or explanation experience traumatic stress that can be toxic to the brain."

- “[P]arents’ own experiences of distress and traumatization can disrupt their immediate and long-term well-being and may impede their ability to buffer their children’s suffering.”

See <http://www.hispanicresearchcenter.org/publications/applying-child-development-research-to-immigration-policy/> (last visited January 14, 2019). Efforts, if any, by counsel, in this or other litigation arising out of the unconscionable Family Separation Policy, to obtain mental health care screening and treatment for named plaintiffs and other persons on an individual basis do not moot Plaintiffs' request or the need for classwide relief.

In an effort to drive this case towards a timely resolution, and following the parties’ unsuccessful settlement discussions culminating in December, Plaintiffs served initial discovery requests on Defendants on January 10, 2019. See Plaintiffs’ Request for Production of Documents, Ex. A. Pursuant to Fed. R. Civ. P. 34, Defendants’ responses are due on February 11, 2019. Plaintiffs are willing to agree to a reasonable extension of time to answer and produce documents in response to these requests if specific information is temporarily inaccessible. However, Plaintiffs do not consent to a blanket stay of discovery deadlines because of the lapse in appropriations for the same reasons the Court did not stay hearing the motion to dismiss. Defendants’ repeated reliance on the lapse in appropriations to justify delaying preliminary injunctive relief and discovery focused on the ultimate merits of this action discount this Court’s finding that “[t]his matter presents certain issues that concern ‘emergencies involving the safety of human life.’” Dkt. 173.

Pursuant to Local Rule 5-1, lodged herewith are the following documents filed in *M.M.M., et al. v. Sessions, et al.* (Case No. 3:18-cv-1832-DMS, USDC, Southern District of California):

- Exhibit B: Settlement Agreement (Plan to Address the Asylum Claims of Class-Member Parents and Children Who are Physically Present in the United States

1 & The Return of Removed Parents to the United States), filed September 12,  
2 2018;

- 3 • Exhibit C: Order Certifying the Settlement Classes and Granting Final  
4 Approval of Class Action Settlement, filed November 15, 2018.

5 **B. Defendants' Statement**

6 Defendants agree that settlement should proceed before a Court-appointed  
7 bench officer. Although Plaintiffs offer to conduct settlement talks in Washington,  
8 D.C., Defendants understand that the appointed bench officer may prefer, or require,  
9 that such negotiations occur within the Central District of California, with all parties  
10 appearing in person. Defendants will defer to the appointed bench officer's  
11 preferences and requirements. To the extent that the bench officer so prefers, or  
12 requires, Defendants will endeavor to appear in person, and with agency  
13 representatives present or available via telephone, as that is Defendants' preferred  
14 means of conducting such sensitive discussions. The ongoing lapse in government  
15 appropriations, however, renders such travel difficult for Defendants and their agency  
16 representatives at this time. Once settlement talks are scheduled, and the bench  
17 officer's preferences and requirements made known, Defendants will revisit the  
18 attendant details.

19 Defendants also ask that the Court, as offered, defer ruling on the pending  
20 motions, and stay all discovery until settlement talks have been completed.  
21 Defendants also intend to soon file a separate motion to stay discovery based on the  
22 proposed settlement discussions, the ongoing appropriations lapse, and other  
23 considerations. A similar motion was granted in *Ms. L*.

24 Defendants respectfully submit that the Court deferring ruling on the pending  
25 motions, and staying discovery, provides an incentive to all parties to settle this  
26 matter. While the Court indicated during the Motion to Dismiss hearing a likelihood  
27 of denying Defendants' Motion to Dismiss, Defendants submit that the numerous and  
28 meritorious arguments in favor of dismissal remain viable. The same is true of the

1 pending class certification and preliminary injunction motions, especially given that  
2 the proper scope of the putative class here is coextensive with the *Ms. L.* class,  
3 notwithstanding the minor differences in the respective language of the two classes'  
4 definitions,<sup>1</sup> a class from which Plaintiffs cannot opt out, and the named Plaintiffs  
5 have all been released and reunited with their children. Contrary to Plaintiffs'  
6 contentions, Plaintiffs do not suffer irreparable harm without preliminary relief. As  
7 made apparent by the *Ms. L.* counsel's efforts, they have obtained pro bono mental  
8 health services for numerous class members, for which they have stated an intention to  
9 seek monetary relief to reimburse providers, and the Government has funded a grant  
10 to provide such services, too, through the HHS's SAMSHA grant program. Plaintiffs'  
11 request for production of documents makes all the more apparent the duplicative  
12 nature of these cases, seeking any and all discovery produced in similar cases. *See*  
13 Plaintiffs' Request for Production of Documents, Ex. A.

14 Further, the financial and workload cost of conducting discovery, which in this  
15 case involves multiple government agencies, many of which are subject to the  
16 ongoing appropriations lapse, present expenses and logistical challenges that are  
17 unnecessary while settlement discussions are ongoing. Indeed, many of the  
18 individuals likely to possess relevant information and documents remain furloughed.  
19 Conducting such partial discovery while these individuals are unavailable would  
20 require subsequent and repeated updates and in general sow confusion.<sup>2</sup> Subjecting  
21 Defendants to discovery while settlement talks are ongoing, and especially while the  
22

23 <sup>1</sup> *See* Third Joint Report, ECF No. 168 at 2 and n.2.

24 <sup>2</sup> Plaintiffs could have commenced discovery in September, but instead waited four  
25 months and filed their first discovery requests while Defendants are in the midst of the  
26 longest government shutdown in history, trying to respond to this Court's Orders, and  
27 preparing for mediated settlement discussions. The Court also has not yet held the  
28 Rule 16 Scheduling Hearing, as it deferred that matter in September; and at the  
Motion to Dismiss hearing, Plaintiffs provided conflicting trial schedule dates.  
Although the rules permit discovery to commence before the scheduling hearing,  
given the complexity of this matter, such discussions and a scheduling order are  
warranted before class-wide discovery should proceed.



1 Government lacks appropriations, thus substantially deters and undermines  
 2 meaningful resolution of this matter, given that this requires diverting limited  
 3 personnel and resources to discovery and other litigation duties.<sup>3</sup> Defendants therefore  
 4 ask that the Court, as offered, defer ruling on the pending motions, and stay discovery,  
 5 pending the outcome of settlement discussions.

6 Regarding Defendants' position about lodging the partial-settlement agreement  
 7 in the *Ms. L.* litigation, Defendants acknowledge that a final settlement was reached  
 8 on the asylum-related claims (Claim III) in the *Ms. L.* litigation. The settlement was  
 9 approved by the *Ms. L.* Court in November and that agreement is a publicly-available  
 10 document. Thus, Defendants do not object to the lodging of that publicly-filed  
 11 settlement agreement.

12 Contrary to Plaintiffs' counsel's arguments at the hearings on September 20,  
 13 2018 and January 7, 2019, that settlement agreement does not eliminate the  
 14 duplicative nature of proceeding in this case. Instead, the settlement does not involve  
 15 the due process claims raised by the *Ms. L.* Plaintiff-Class, which includes the named  
 16 Plaintiffs and proposed class members in the instant case, and those issues remain to  
 17 be litigated in *Ms. L.*

18  
 19 Dated: January 14, 2019

/s/ Amy P. Lally  
 Amy P. Lally  
 Attorneys for Plaintiffs

20  
 21 Dated: January 14, 2019

/s/ Michael Heyse  
 Michael Heyse  
 Attorneys for Defendants

22  
 23  
 24  
 25  
 26  
 27 <sup>3</sup> If the Court issues a preliminary injunction or certifies a class, Defendants would  
 28 need to consider and possibly seek authorization for an expedited appeal. Such  
 activities and attendant judicial resources would be rendered unnecessary in the event  
 of a settlement.

**ATTESTATION**

I hereby attest that the other signatory listed, on whose behalf this filing is submitted, concurs in the filing's content and has authorized the filing.

Dated: January 14, 2019

/s/ Amy P. Lally

Amy P. Lally  
Attorneys for Plaintiffs